

Remarks:

In the Office Action mailed on June 9, 2009, the Examiner rejected claims 1-6.

In the Specification

Applicant has amended the Specification to change the term “granulometry” for “particle size.” Applicant, Mr. Pascal Aznar, submits a declaration herewith including evidence (Exhibits C and D to the Declaration of Mr. Aznar) illustrating that this change is appropriate in light of the translation of the definition provided for term *granulométrie* provided in the online dictionary *universalis.fr* from French (Exhibit C) and industry usage (Exhibit D). Applicant also requests entry of an amendment to correct a formatting issue with the previously submitted specification. No new matter has been added.

Status of the Claims

Claims 1-6 were rejected in the Office Action. Claims 1 and 2 are amended herein. Claims 1-6 are now pending in the application.

The Claims

35 USC 102/35 USC 103

Claims 1-6 were rejected under 35 U.S.C. 102(e)/35 U.S.C. 103(a) as unpatentable over Ren (US 2004/0018260, hereinafter “Ren”) and/or over Ramage (US 6,359,113, hereinafter “Ramage”). Applicant traverses these rejections.

The Examiner argues with respect to both Ren and Ramage that these references, respectively, disclose flash chromatography comprising spherical and porous silica gel (Office Action page 2, Paragraph 3, and Page 3, Paragraph 7). Applicant disagrees. Mr. Pascal Aznar, the

inventor-applicant of the present application, an expert on flash chromatography, presents herewith a declaration in which he declares that the disclosures of Ren and Ramage do not disclose spherical silica particles. For each of the references, Mr. Aznar has inquired with the respective manufacturers of the silica gel discussed in the reference to confirm the shape of the respective products discussed in Ren and Ramage in cited passages. For both Ren and Ramage the respective manufacturers confirmed Mr. Aznar's understanding and belief that the granules used have an irregular shape. These exchanges, made by email correspondence, are attached to Mr. Aznar's declaration.

As declared by Mr. Aznar and supported by the evidence he presents, neither Ren nor Ramage teach or suggest "flash chromatography comprising spherical and porous silica gel" (Claim 1). Accordingly, Claim 1 is neither anticipated by nor obvious over Ren and/or Ramage, for at least that reason.

With respect to Claim 2, the Examiner asserts that "semi-spherical" refers to something that is somewhat spherical shape" and that "a semi-spherical silica granule would be anticipated or obvious in view of the spheres of Ren [and/or Ramage]." Office Action, Page 2, Line 23 – Page 3, Line 2 and Page 3, Lines 11 – 14. Considering that neither reference teach or suggest spherical granules, the Examiner's premise is incorrect and therefore the conclusion is also incorrect. Thus, Claim 2 is also not anticipated by or obvious over Ren and/or Ramage.

Claims 3 through 6 depend from Claims 1 or 2, incorporate all the limitations of either of these base claims, provide further unique and non-obvious combinations, and are patentable over Ren and Ramage at least for the reasons given in support of Claims 1 and 2, respectively, and by virtue of such further combinations.

Claims 4 through 6 stand rejected under the combination of Ren and Fuji (XP-002198180, hereinafter "Fuji"), and Ramage and Fuji, and

Claims 1 through 6 were rejected under 35 USC 103(a) as unpatentable over Fuji. Applicant traverses these rejection. As discussed hereinabove, Ren and Ramage both fail to teach or suggest “spherical [and semi-spherical] and porous silica gel having particle size between 3 and 45 μm .” Claims 1 and 2. Fuji also fails to teach or suggest such particles. While Fuji discloses particles of having a particle size of 42 μm , those particles are not spherical or semi-spherical.

In support of the 103(a) rejection based on Fuji alone, the Examiner states that “Fuji does not explicitly disclose the 42 μm particles being spherical or semi-spherical.” Office Action, Page 7, Paragraph 22. The Examiner attempts an argument that Fuji’s “granular” particles may be interpreted as spherical or semi-spherical based on the Applicant’s statement in the specification that spherical or semi-spherical porous silica gel comprised of “granules.” Office Action, Page 7, Paragraph 23. Applicant disagrees with this reading of the specification. Applicant has further amended the Specification (consistent with accepted industry terminology) to use “particle size” in lieu of “granulometry” and the previous unfortunate and incorrect translation of “granulométrie” to “granules.” Thus, to say that Fuji’s “granular” granules are no less spherical than the silica spheres of Applicant’s disclosure is incorrect.

Applicant has extensively discussed the differences in meaning between *granular* and *spherical*. Applicant invites and requests the Examiner consider the discussion of the Amendment of February 27, 2009, Pages 5 – 8. In there, it is very clearly established that *granular* means something different than *spherical*. The fact that Fuji uses *spherical* to describe the 60 μm particles and *granular* to describe the 42 μm particles should be evidence enough that Fuji’s use of *granular* with the latter is clear and irrefutable evidence of that the 42 μm particles of Fuji cannot be considered a disclosure of *spherical* 42 μm particles.

Thus, Fuji, taken singly, or in combination with Ren and/or Ramage does not teach or suggest spherical and porous silica gel having particle size between 3 and 45 μm . Accordingly, Claims 1 and 2, and the dependent claims are not obvious over Fuji taken singly or in combination with Ren and/or Ramage.

The Examiner rejected Claims 1 – 6 as unpatentable over the combination Fuji and Williams (US 5,559,039, hereinafter Williams). Applicant traverses the rejection.

Williams does indeed teach the use of spherical particle packing material having a 4.5 μm particle diameter. However, in a different operating application. Williams is concerned with HPLC columns. Williams does not teach or suggest its application to flash chromatography. As discussed in the Amendment of December 9, 2008, Pages 7 – 9, with respect to the 35 USC 103 rejection of the claims over the combination of Fuji and Schwartz (WO 92/04976, hereinafter “Schwartz”) and further discussed in the Declaration of Mr. Pascal Aznar annexed thereto, the successful application of small-size spherical particles is surprising. The expected back pressure from application of small particles would not suggest the application of Williams to flash chromatography for the same reasons as it would not be obvious to combine Schwartz and Fuji. Accordingly, Claims 1 through 6 are not obvious over the combination of Fuji and Williams because, as discussed in the Amendment of December 9, 2009, in regard to the proffered combination of Fuji and Schwartz it is not obvious to combine the smaller size particles with the disclosure of Fuji.

Thus, for the reasons given above, Applicants respectfully request withdrawal of the rejection of Claims 1 through 6 and their early allowance.

The application is now deemed to be in condition for allowance and notice to that effect is solicited.

CONCLUSION

It is submitted that all of the claims now in the application are allowable. Applicants respectfully request consideration of the application and claims and its early allowance. If the Examiner believes that the prosecution of the application would be facilitated by a telephonic interview, Applicants invite the Examiner to contact the undersigned at the number given below.

Applicants respectfully request that a timely Notice of Allowance be issued in this application.

Respectfully submitted,

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/Pehr Jansson/
Pehr Jansson

Registration No. 35,759

The Jansson Firm
3616 Far West Blvd #117-314
Austin, TX 78731
512-372-8440
512-597-0639 (Fax)
pehr@thejanssonfirm.com